

§ 25.2523(g)-1

the exclusion rule in § 25.2523(f)-1(d)(1) does not apply under § 25.2523(f)-1(d)(2). However, because S is treated as the transferor of the property, the property is not subject to inclusion in D's gross estate under section 2036 or section 2038. If the executor of S's estate made a section 2056(b)(7) election with respect to the trust, the trust is includible in D's gross estate under section 2044 upon D's later death.

[T.D. 8522, 59 FR 9660, Mar. 1, 1994]

§ 25.2523(g)-1 Special rule for charitable remainder trusts.

(a) *In general.* (1) With respect to gifts made after December 31, 1981, subject to section 2523(i), if the donor's spouse is the only noncharitable beneficiary (other than the donor) of a charitable remainder annuity trust or charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2523(b) does not apply to the interest in the trust transferred to the donee spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under section 2523(g) and the value of the remainder interest qualifies for a charitable deduction under section 2522.

(2) A marital deduction for the value of the donee spouse's annuity or unitrust interest in a qualified charitable remainder trust to which section 2523(g) applies is allowable only under section 2523(g). Therefore, if an interest in property qualifies for a marital deduction under section 2523(g), no election may be made with respect to the property under section 2523(f).

(3) The donee spouse's interest need not be an interest for life to qualify for a marital deduction under section 2523(g). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years or the trust does not qualify under section 2523(g).

(4) A deduction is allowed under section 2523(g) even if the transfer to the donee spouse is conditioned on the donee spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust.

(5) For purposes of this section, the term *noncharitable beneficiary* means any beneficiary of the qualified chari-

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table remainder trust other than an organization described in section 170(c).

(b) *Charitable remainder trusts where the donee spouse and the donor are not the only noncharitable beneficiaries.* In the case of a charitable remainder trust where the donor and the donor's spouse are not the only noncharitable beneficiaries (for example, where the noncharitable interest is payable to the donor's spouse for life and then to another individual (other than the donor) for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2523(f) and not under section 2523(g). Accordingly, if the transfer to the trust is made prior to October 24, 1992, the spousal annuity or unitrust interest may qualify under § 25.2523(f)-1(c)(3) as a qualifying income interest for life.

[T.D. 8522, 59 FR 9663, Mar. 1, 1994]

§ 25.2523(h)-1 Denial of double deduction.

The value of an interest in property may not be deducted for Federal gift tax purposes more than once with respect to the same donor. For example, assume that D, a donor, transferred a life estate in a farm to D's spouse, S, with a remainder to charity and that D elects to treat the property as qualified terminable interest property. The entire value of the property is deductible under section 2523(f). No part of the value of the property qualifies for a charitable deduction under section 2522 for gift tax purposes.

[T.D. 8522, 59 FR 9663, Mar. 1, 1994]

§ 25.2523(h)-2 Effective dates.

Except as specifically provided, in §§ 25.2523(e)-1(c)(3), 25.2523(f)-1(c)(3), and 25.2523(g)-1(b), the provisions of §§ 25.2523(e)-1(c), 25.2523(f)-1, 25.2523(g)-1, and 25.2523(h)-1 are effective with respect to gifts made after March 1, 1994. With respect to gifts made on or before such date, donors may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 25.2523(e)-1(c), 25.2523(f)-1, 25.2523(g)-1, and 25.2523(h)-1, (as well as project LR-211-76, 1984-1 C.B., page 598, see § 601.601(d)(2)(ii)(b) of this chapter),